IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO No. 70 of 2002.

Judgement reserved on: 1.6.2007

Date of decision: 10.7.2007.

Rajesh Kumar .....Appellant

Vs.

Rajendra Vishnoi and Ors. .... Respondents.

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?*[1] *No

For the Appellant : Mr. J.L. Bhardwaj, Advocate.

For the Respondents : Mr. K.D. Sood, Advocate,for respondents No.3 and 5.
None for other respondents.

Kuldip Singh, Judge.

The injured-claimant Rajesh Kumar is in appeal for enhancement against the award dated 30.5.2001 passed by learned Motor Accident Claims Tribunal-II, Solan in M.A.C. Petition No.16-S/2 of 1998/99.

2. The facts in brief are that on 19.1.1997, the claimant was travelling in Tata Sumo No.HR-28-A-0072 along with respondent No.4 owner of the vehicle. The driver respondent No.2 due to rash and negligent driving of bus No.RJ-14-P-5812 caused the accident, as a result of which, the claimant suffered multiple grievous injuries on his person, compound fracture of the face, lost his left eye which caused permanent disability to him. The accident took place near A.R. Station, Jaipur on 19.1.1997 at about 8.30 A.M. FIR

Whether the reporters of the local papers may be allowed to see the Judgment? Yes

No.44/97 dated 19.1.1997 was also registered regarding the accident. The claimant was admitted at SMS Hospital Jaipur from 19.1.1997 to 27.1.1997 where he was operated. He was discharged from SMS hospital, Jaipur and referred to PGI Chandigarh where he remained indoor patient from 28.1.1997 to 7.2.1997 and was operated. He was again admitted from 15.7.1997 to 18.7.1997 in Dr. Mohan Lal Memorial Gandhi Netra Chikatsalya, Aligarh. The claimant made many visits to various hospitals for his treatment . The petitioner has incurred Rs.1,50,000/- expenses on his treatment. He has suffered 100% disability He claimed Rs.24 lacs compensation along with interest at the rate of 18% per annum. He has submitted that in case, the negligence of driver of Tata Sumo No.HR-28-A-0072 is established then compensation be awarded against the respondent No.4 also who is owner of Tata Sumo vehicle. The New India Assurance Company the insurer of both the vehicles involved in the accident was also impleaded as a party as respondent No.3 and respondent No.5. The respondent No.1 is the owner of the bus. The claimant was about 27 years of age and earning Rs.20,000/- per month at the time of accident. On these grounds the claimant filed the petition.

3. Respondent No.4 contested the petition by filing reply. He has denied the injuries sustained by the claimant. He has denied that the claimant has suffered 100% disability and he has incurred Rs.1,50,000/- on his treatment. The compensation claimed by the claimant is excessive. It has been submitted that accident had taken place due to rash and negligent driving of bus by respondent No.2,

Tata Sumo vehicle owned by him was insured and liability ,if any, is of the insurer of Tata Sumo vehicle.

4. The New India Assurance Company is the insurer of both the vehicles and in its reply the insurer has taken preliminary objections that the petition against the insurer is not maintainable. The drivers of bus No.RJ-14-P-5812 and Tata Sumo No HR-28-A-0072 at the time of accident were not having valid and effective driving licences. These vehicles were being driven in violation of Motor Vehicle Act and as per standard policy conditions, the insurer is not liable to pay any compensation. The bus No.RJ-14-P-5812 and Tata Sumo No.HR-28-A-0072 were not having valid registration certificates, route permits and fitness certificates at the time of alleged accident. The compensation claimed is excessive. There is collusion between the claimant and respondents No.1,2 and 4. On merits insurer has denied the claim of the claimant.

5. The learned Tribunal has held that the accident had taken place due to the rash and negligent driving on the part of respondent No.2 and awarded Rs. 3,07,200/- compensation to the claimant which is to be paid by respondent No.3-insurer. It has been ordered that award amount be paid within 30 days from the date of order, failing which interest at the rate of 12% per annum shall be payable from the date of petition till its realization. The claimant has filed the appeal for enhancement of compensation.

6. I have heard the learned counsel for the parties and have also gone through the record.

7. The learned counsel for the claimant has submitted that keeping in view the injuries sustained by him in the accident, his proved income, age, expenses on treatment, the Tribunal has awarded less compensation to the claimant. The interest has not been awarded as per well settled norms. On the other hand learned counsel representing the insurer has submitted that claimant is not entitled to any enhancement of compensation.

8. The compensation is to be fixed keeping in view the pecuniary and non-pecuniary damages. ***In R.D. HATTANGADI vs. PEST CONTROL (INDIA) PVT. LTD. AND OTHERS (1995) 1 Supreme Court Cases 551,*** the Supreme Court has held as follow:-

> *9."Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actual incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal*

longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life".

9. In ***Shri Brestu Ram versus Shri Anant Ram and others 1989(2) Sim. L.C. 298,*** learned Single Judge of this Court has held as follows:-

32 " …….*It is well settled that in disablement cases compensation has always to be higher than even in cases of death since it given to the living victim of the accident both for his personal loss and for economic loss. It can be said that the bodily injury is to be treated as a deprivation which entitled the victim to claim damages which vary according to the gravity of the injury. Further, due to this injury, there can be loss of earnings completely or partial due to the accident on his capacity to earn the same. Another consequence may be the loss he suffers on account of the enjoyment of life or full pleasures of living"*

10. In the present case Rajesh Kumar claimant has appeared as PW-1 and has stated that after the accident, he remained admitted in SMS hospital, Jaipur from 19.1.1997 to 25.1.1997. He was twice operated for eye and jaw. He was attended by Rameshwer, Ram Pal and Mukesh. Their expenses were Rs.300/- per day. He has spent Rs.40,000/- for his treatment at Jaipur. He could not bear the expenses therefore he was discharged from Jaipur but was admitted at PGI Chandigarh on 28.1.1997 to 8.2.1997. After that he remained out door patient. At PGI Chandigarh he has spent about Rs.60,000/- on his treatment. He had to go to PGI Chandigarh from Parwanoo and every visit used to cost him Rs.300 to Rs.350.

He was treated as out door patient for 15 days at Dr. Mohan Lal Memorial Gandhi Netra Chikatsalya, Aligarh on account of injuries sustained in the accident. Pain around his eye and head is still there and he can not work properly. He has employed two servants in his shop namely Ram Pal and Rameshwar on Rs.5,000/- and Rs.3000/- per month salary respectively. He is income tax assessee. He has suffered 40% disability.

11. PW-3 Rajiv Ahuja has proved Income Tax Return Ex.PW-3/A of the petitioner. PW-4 Rameshwar Dass has deposed that petitioner is a whole seller of confectionary items . The petitioner could not run his shop properly after the accident and he had worked with petitioner on Rs.5,000/- per month salary. He also attended petitioner at SMS hospital, Jaipur, Mukesh and father of the petitioner also attended him at Jaipur. PW-5 Anil Bansal Medical Officer, District Hospital, Solan has proved disability certificate Ex.PW-5/A of the petitioner. According to this witness, petitioner has suffered 40% permanent disability. The disability of eye is 30% and rest of the face is 10%. PW-6 Dr. Pardeep Goel, SMS Medical College, Jaipur has stated that petitioner was treated by him at SMS hospital, Jaipur. He suffered injuries on the face, which had broken his jaw at three places and there was no sight in the left eye . The left lower eye lash had a cut, there was deep cut above the nose. He came in the hospital in injured condition on 19.1.1997. He was operated on 21.1.1997, two units of blood was given to him. His jaw was fixed at three places by steel wires. The eye lash and nose were repaired. A separate eye operation of petitioner was also undertaken and his left eye was

removed as it was badly damaged. The petitioner had suffered serious injuries in the accident. The loss of eye sight and disfigured face is permanent. He has proved diagnose/discharge tickets Ex.PW-6/A and Ex.PW-6/B regarding eye treatment. The petitioner remained admitted in SMS hospital from 19.1.1997 to 25.1.1997. The petitioner must have spent Rs.25,000/- to Rs.30,000/- on his treatment at Jaipur. Ex.R-1 is the Insurance Policy.

12. The Tribunal has awarded Rs.3,07,200/- to the claimant-petitioner but how this amount has been calculated has not been disclosed in the impugned award.

13. In view of ***R.D. HATTANGADI*** case supra, the petitioner is entitled to pecuniary damages for : (i) medical attendance; (ii) loss of earning and non-pecuniary damages for (i) damages for mental and physical shock, pain and suffering, (ii) loss of amenities of life (iii) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life etc.

14. The income of the petitioner as per income tax return Ex.PW-3/A was Rs.65403/- or say about Rs.5,500/- per month. The claimant at the time of accident as per matriculation certificate Ex.PW-1/A was 27 years of age. He was operated for injuries of the face and eye twice. He remained indoor patient in SMS hospital, Jaipur from 19.1.1997 to 25.1.1997 and at PGI, Chandigarh from 28.1.1997 to 8.2.1997. He has deposed that Rs.40,000/- were spent on his treatment at SMS hospital, Jaipur and about Rs.60,000/- on his treatment at PGI Chandigarh. He got treatment for about 15 days as outdoor patient at Dr. Manohar Lal Memorial Gandhi Netra

Chikatsalya, Aligarh. He visited PGI Chandigarh several times and each visit used to cost him Rs.300/- to Rs. 350/- He has suffered permanent disability 40% as per disability certificate Ex.PW-5/A. The disability of left eye is 30% and 10% is of the face. He was attended at SMS hospital, Jaipur. He has kept one employee for his help in the shop. The respondents have not rebutted the evidence led by claimant-petitioner.

15. The petitioner at the time of accident was earning about Rs.5,500/- per month which is supported by income tax return Ex.PW-5/A. Therefore, income of the petitioner can be safely taken Rs.5,500/- per month at the time of accident. The Tribunal in Para 18 of the impugned award has taken into consideration various bills regarding the treatment of petitioner. The sum total of these bills comes to Rs.17454.90/- or say Rs.17455/-. The petitioner has stated that he was operated twice, there is no rebuttal to the assertion of the petitioner that he was operated twice. It can be safely presumed that he must have spent about Rs.15,000/- on his two operations. The petitioner is therefore, entitled to Rs.15,000/- plus Rs17455/- for his medical treatment. The petitioner visited several times PGI, Chandigarh, Dr. Manohar Lal Memorial Gandhi Netra Chikatsalya, Aligarh, he must have spent some amount on these visits which can be assumed at Rs.10,000/- in all. The petitioner remained in door patient in two spells at Jaipur and at PGI, Chandigarh from 19.1.1997 to 25.1.1997 and from 18.1.1997 to 8.2.1997. He has stated that at Jaipur he was attended by Rameshwar, Ram Pal and Mukesh. He must have been attended by someone at PGI Chandigarh also.

Therefore, he is entitled to attendant expenses quantified Rs.20,000/- in all. The petitioner must have taken special diet and he must have spent some amount on special diet which is quantified at Rs.5,000/-. The petitioner was youngman of about 27 year of age, he lost one eye and accident disfigured his face. The petitioner was operated twice, steel wire was inserted in his broken jaw. He suffered 40% permanent disability out of which 30% is of left eye and 10% is of the face. The loss of one eye and disfigurement of the face is permanent for the petitioner and therefore, on account of past and future pain and suffering the petitioner is entitled to Rs.20,000/- . The disability of the petitioner as per Ex.PW-5/A is 40%, therefore, in my opinion for loss of amenities of life and discomfort, the petitioner is entitled to Rs.60,000/- . The petitioner remained indoor patient twice at SMS hospital, Jaipur and PGI Chandigarh for total 18 days, it can be safely presumed that for visiting various hospital, he must have spent another 27 days. Therefore, due to accident, the petitioner absented from his work in all for 45 days. The petitioner was earning at about Rs.5,500/- per month as per income tax return Ex.PW-3/A, therefore, petitioner for actual loss of income is entitled to Rs.8250/-.

16. The petitioner was whole seller in the year 1997, he was earning about Rs.5,500/- per month. This income was likely to increase. ***In Chetan vs. Himachal Road Transport Corporation [2006 ACJ 1326]***, this Court has taken future income of 11 years boy Rs.5000/- per month. In that case the disability was 28% but for purposes of assessing the future income the loss was taken at 15%.

In the present case disability of the petitioner is 40% and for the purposes of assessing future income the loss can be safely taken 20%. Thus, even if income of the petitioner is taken about Rs.5,500/- per month, his loss of future income would be Rs.1100/- PM. The petitioner was 27 years of age and if multiplier of 16 is applied than his future loss of income would be Rs 1,76,000/-.

17. The claimant-petitioner is entitled to compensation for (i) medicines Rs.17455/-, (ii) two operations, Rs.15,000/-, (iii) transportation charges Rs.10,000/-, (iv) attendant expenses Rs.20,000/-, (v) actual loss of income Rs.8,250/-, (vi) amount on special diet Rs.5,000/-, (vii) past and future pain and suffering on account of accident, Rs. 20,000/-,(viii) loss of amenities of life and discomfort Rs. 60,000/-, (ix) future loss of income Rs 1,76,000/-. The total compensation payable to petitioner thus comes out to Rs.3,27,704/-.

18. The learned Tribunal has held that accident had taken place due to rash and negligent driving of respondent No.2, driver of bus No.RJ-14-P-5812. Issue No.4 regarding the violation of Registration Certificate, Route permit, Fitness Certificate and breach of Insurance Policy has been decided against the Insurance Company namely New India Assurance Company which was insurer of both the vehicles. The Tribunal has ordered that the award amount shall be payable by respondent No.3, New India Assurance Company, therefore, finding of the Tribunal that the accident took place due to rash and negligent driving of respondent No.2 driver of the bus and that the award amount is to be paid by respondent No.3,

insurer, to the claimant-petitioner has become final. In these circumstances, the award amount of Rs.3,27,704/- along with 9% interest per annum from the date of filing of the petition shall be paid by respondent No.3, New India Assurance Company, insurer of the bus to the claimant-petitioner.

19. In view of the above discussion, the impugned award is modified and an amount of Rs.3,27,704/- on account of compensation is awarded in favour of the claimant-petitioner and against respondents No.1,2 and 3 jointly and severally along with 9% per annum interest from the date of filing of the petition i.e. 25.8.1998 till the payment and since bus No.RJ-14-P-5812 was insured with respondent No.3, therefore, respondent No.3, New India Assurance Company, shall pay the entire compensation along with interest to the petitioner. No costs.

(Kuldip Singh)
Judge.

July 10, 2007
(sks)